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# In Colorado, open records laws can be a weapon against transparency

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As the first state to pass a Sunshine Law for government meetings, Coloradans are justifiably proud of our state's history as a leader in safeguarding open government. Our guarantees of public access to government records, however, are not so enviable.



For those of us who routinely use the Colorado Open Records Act ("CORA") as a way of monitoring how state and local governments are serving their constituents, it was no surprise when the State Integrity Investigation gave Colorado an "F" grade on public access to information. Sadly, Coloradans have allowed our state's well-known aversion to taxation to trump our desire for open government, while aggressive government lawyers have figured out how to game the system to put citizens seeking public records on the defensive.

As government revenue continues to shrink as a result of a 1992 ballot initiative, cash-strapped state agencies and local governments have become more aggressive about shifting the cost of transparency onto members of the public who ask for information.

Although the Open Records Act specifies a charge of only 25 cents per page for copies of documents, court decisions have allowed agencies to charge for research time in certain circumstances.

The exception has grown to swallow the rule as government offices routinely charge fees for time spent responding to open records responses. Earlier this year, Colorado Governor John Hickenlooper reversed his predecessor's policy of not charging for research time and imposed a \$20 per hour charge across the board for time spent responding to CORA requests to executive offices. More recently, [Elbert County followed suit](#), adopting a policy of charging the same \$20 per hour rate. These are only the two most recent examples of a practice that has become widespread throughout the state.

There is no question that research fee charges deter citizens from requesting access to public records. One neighborhood activist in Denver gave up on an open records request after the city told her they would charge her \$1,400 to redact email addresses from messages sent to her city council member about a local development. Faced with the choice of paying steep research fees or going to court to challenge a research fee demand, many Coloradans just give up trying to exercise their right to review government documents.



Sometimes, the choice of going to court is made for the requesting party. Colorado law allows a government official in an uncertain case to file a petition for a judicial determination of whether a requested document should be available under CORA. Aggressive government attorneys have used that statute as a weapon to file pre-emptive lawsuits against requestors, then argue that CORA's normal award of attorneys' fees to a requestor who wins a CORA case does not apply when the government sues first.

This strategy doesn't always work, and in fact can backfire. Colorado Ethics Watch was awarded over \$10,000 in 2009 in litigation that was launched by the Colorado Independent Ethics Commission in response to an open records request. More recently, election transparency activist Marilyn Marks won a CORA lawsuit initiated by the Jefferson County Clerk and Recorder; Marks' legal expenses reportedly total over \$100,000. Most Coloradans, however, don't have the same ability to stay in an expensive lawsuit and recover their fees later.

Elbert County took matters to yet another level this spring, when county officials went to court to get a restraining order against a citizen who filed multiple requests for documents about vacation payments to the sheriff. A judge vacated the restraining order, but the case is a symptom of a political culture that has

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come to treat transparency as an expensive distraction at best.

Coloradans need to demand that their government, state and local, treat transparency as a core mission and not a distraction -- even if that means government must absorb more of the cost of responding to records requests. Only then can we say that every Coloradan truly has the right to inspect public documents.

To learn more about issues of ethics and transparency in Colorado, visit the [Colorado Ethics Watch website](#).

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